

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Pegasus Development Corporation)	SAT-MOD-20030826-00166
)	Call Sign S2350
Authority for Modification of Authorization)	
To Launch and Operate a Ka-band Satellite)	
System in the Fixed-Satellite Service)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2003

Released: December 22, 2003

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we declare Pegasus Development Corporation's (Pegasus) license for two Ka-band satellites at the 117° W.L. orbit location null and void for failure to begin construction by the required date.¹ This action is part of the Commission's ongoing effort to ensure that entities awarded space station licenses remain willing and able to proceed with system construction. Requiring licensees to adhere to the implementation milestone schedule included in each license prevents warehousing of scarce orbit-spectrum resources and ensures that unused spectrum can be promptly reassigned. Consequently, the 117° W.L. orbital location is now available for reassignment to another Ka-band satellite. Because Pegasus's license for satellites at 117° W.L. is null and void, we dismiss as moot its request to relocate the satellite to the 87° W.L. orbital location and its request to extend the remaining implementation milestones for the satellites.

II. BACKGROUND

2. In August 2001, the International Bureau (Bureau) assigned orbit locations to "Second Round" applicants proposing to provide fixed-satellite service (FSS) from satellite systems in the geostationary satellite orbit (GSO) using Ka-band frequencies.² The Bureau authorized 11 companies to operate GSO Ka-band satellites at a total of 34 orbit locations. In addition to expanding several previously licensed systems, the Bureau licensed several new systems, including Pegasus. In contrast to the First Ka-band Processing Round, the Second Round applicants were unable to reach an agreement regarding their conflicting requests for orbit assignments. This was because there were not enough orbit locations with both U.S.-date priority

¹ Specifically, we licensed Pegasus to operate in the 18.35-18.6 GHz and 19.7-20.2 GHz frequency bands. Pegasus Development Corporation, *Order and Authorization*, 16 FCC Rcd 14378 (Int'l Bur. 2001) (*Pegasus Order*). For ease of reference, we refer to these frequency bands as the Ka-band in this order.

² Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band, *Order*, 16 FCC Rcd 14389 (Int'l Bur. 2001) (*Second Round Assignment Order*). In 1997, the Bureau licensed 13 applicants to operate FSS systems in the "First Round." Assignment of Orbital Locations to Space Stations in the Ka-band, *Order*, 13 FCC Rcd 1030 (Int'l Bur. 1997).

for international coordination purposes and coverage of the contiguous United States to accommodate all the applicants. Thus, the Bureau assigned orbital locations based on several factors including each applicant's requests and the Commission's established policy of giving new entrants at least one location capable of serving all 50 states.³ The Second Round Assignment Order provided that, as with previous assignment plans, requests for changes in the orbit assignment plan would be entertained if they were consistent with the basic structure of the plan and agreed to by most, if not all, of the operators affected by the change. Licensees were afforded 30 days to file such requests.⁴

3. In its Second Round application, Pegasus proposed to construct, launch and operate a system of ten satellites at five orbital locations. Pegasus requested orbital assignments no more than 14 degrees from the 101° W. orbital location and indicated a specific preference certain orbital locations, including 87° W.L. Pegasus acknowledged that at that time the 87° W.L. location had already been assigned to Motorola, Inc. in the First Ka-band Processing Round. At the time the Second Round authorizations were issued, the 87° W.L. orbit location was still assigned to Motorola and was not available for reassignment. Instead, the Bureau assigned Pegasus to five locations including 117° W.L.⁵ The assignment was made in accordance with the Commission's policy to provide new entrants with one 50-state coverage location that had U.S. date-priority for international coordination.⁶ In addition, as set forth in the Commission's rules, Pegasus's license contained explicit deadlines or "milestones" for system implementation. Failure to meet any of the milestones would render the satellite authorizations null and void.⁷ Accordingly, Pegasus was required to commence construction of its first satellite by August 2002, and for its remaining satellites by August 2003. In August 2002, Pegasus satisfied its first milestone by entering into a non-contingent construction contract for its satellite at the 107° W.L. orbital location.⁸ It subsequently returned the licenses for satellites at three other locations, holding the license for the satellites at 117° W.L.⁹ Pegasus admits it did not begin construction for the satellite at 117° W.L. as required by the August 2003 milestone, but requests extensions of all the milestone dates for this satellite.¹⁰

4. Pegasus claims that an extension is warranted because the 117° W.L. orbital location is inconsistent with its business plan and has hampered its ability to obtain financing. Pegasus asserts that its inability to obtain financing to develop the 117° W.L. orbital location is an unforeseeable circumstance beyond its control.¹¹ The location is not within 14 degrees of 101° W.L., as originally requested, and according to Pegasus, reliable service cannot be provided to many of its existing customers in the New

³ *Second Round Assignment Order*, 16 FCC Rcd at 14391.

⁴ *Second Round Assignment Order*, 16 FCC Rcd at 14400.

⁵ Pegasus was authorized to operate at the 117° W.L., 107° W.L., 43° W.L., 28° E.L. and 107.5° E.L. orbital locations. Pegasus Development Corporation, Application for Authority to Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Pegasus Order*, 16 FCC Rcd at 14386.

⁶ Four orbital locations requested by Pegasus were assigned in the First Round and thus not available for assignment. The orbit locations assigned to Pegasus included a location with 50 state coverage that also had U.S. International Telecommunication Union date priority. Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band, *Order*, 16 FCC Rcd 14389, 14400 (Int'l Bur. 2001).

⁷ *Pegasus Order*, 16 FCC Rcd at 14385.

⁸ Pegasus Development 107 License Corporation, *Memorandum Opinion and Order*, DA 03-3627 (rel. Nov. 13, 2003).

⁹ See Letter to Marlene H. Dortch, Secretary, FCC, from Bruce D. Jacobs, Counsel for Pegasus Development Corporation (July 8, 2003), surrendering the Pegasus authorization for the 43° W.L., 28° E.L. and 107.5° E.L. orbital locations.

¹⁰ Pegasus Development Corporation, Application for Reassignment and Waiver Request, SAT-MOD-20030826-00166 (*Pegasus Modification Application*), at 4.

¹¹ *Pegasus Modification Application* at 5.

England area.¹² Pegasus states that it has only recently had the opportunity to seek reassignment to an orbital location more consistent with its business needs.¹³ In the alternative to its extension request, Pegasus states that the Commission should waive the milestone for the 117° W.L. location. A waiver, Pegasus claims, would not undermine the policy objectives of the milestone requirement, because there is little concern that Pegasus would prevent the use of Ka-band spectrum by other entities considering that there are many orbit locations available for Ka-band satellites.¹⁴ Further, Pegasus asserts, the public interest is better served by a waiver because it, as a new entrant, is committed to providing much needed communication services to rural areas.¹⁵

III. DISCUSSION

A. Milestone Extension

5. It is long standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.¹⁶ The milestone schedule included in each authorization, since the 1980's, is designed to ensure that licensed entities are proceeding with construction and will launch their satellites into the limited orbit-spectrum resource in a timely manner.¹⁷ The Commission imposes these requirements in order to prevent "warehousing" of spectrum and orbital slots by licensees who are not able or willing to build their systems in a timely manner. Construction commencement milestones are particularly important because they provide an initial objective indication as to whether licensees are committed to proceeding with implementation of their systems.¹⁸ The Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.¹⁹ Because it is in the public interest to ensure that the orbit-spectrum resource is being used efficiently, the Commission has strictly enforced milestone schedules.²⁰

6. The standard that licensees must meet to justify a milestone extension is well established. Extensions of milestones are granted only when the delay in implementation is due to circumstances beyond a licensee's control.²¹ A milestone extension will be considered favorably where it is based on tangible, physical, construction-related problems that could not be foreseen when the license was granted.²²

¹² *Pegasus Modification Application* at 5.

¹³ *Pegasus Modification Application* at 5.

¹⁴ *Pegasus Modification Application* at 8.

¹⁵ Pegasus's application was placed on Public Notice, Report No. SAT-00164 (Sept. 12, 2003). No comments or petitions were filed in response to the Notice.

¹⁶ *Norris Satellite Communications, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997).

¹⁷ *PanAmSat Licensee Corp., Memorandum Opinion and Order*, 15 FCC Rcd 18720, 18722 (Int'l Bur. 2000).

¹⁸ *Application of Motorola, Inc. and Teledesic, LLC, Memorandum Opinion and Order*, 17 FCC Rcd 16543, 16547 (Int'l Bur. 2003).

¹⁹ *See, e.g., Norris Satellite Communications, Inc.*, 12 FCC Rcd at 22203; *Morning Star Satellite Company, LLC, Memorandum Opinion and Order*, 15 FCC Rcd 11350, 11352 (Int'l Bur. 2000), *aff'd* 16 FCC Rcd 11550 (2001).

²⁰ *See, e.g., Morning Star Satellite Company*, 15 FCC Rcd at 11352; *Advanced Communications Corporation, Memorandum Opinion and Order*, 10 FCC Rcd 13337 (Int'l Bur. 1995).

²¹ *Columbia Communications Corp., Memorandum Opinion and Order*, 15 FCC Rcd 16496, 16497 (Int'l Bur. 2000); *Pan Am Sat Licensee Corp., Memorandum Opinion and Order*, 16 FCC Rcd 11534, 11537 (2001).

²² *AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993); *PanAmSat Licensee Corp., Memorandum Opinion and Order*, 15 FCC Rcd 18720 (Int'l Bur. 2000).

7. Pegasus has not demonstrated circumstances beyond its control justifying an extension. The Commission has repeatedly held that an extension request motivated primarily by economic considerations does not present a sufficient basis for grant of an extension.²³ Further, the Commission has explained that while the construction contract must be binding to meet the construction commencement milestone, it does not have to contain unalterable technical specifications.²⁴ Thus, technical or regulatory uncertainty is no excuse for not meeting the construction commencement milestone and operators cannot defer contracting due to these alleged uncertainties.²⁵ Pegasus's decision not to enter into a contract but to wait for a possible reassignment is a business decision that does not justify a milestone extension.

8. Further, if the 117° W.L. orbit location assignment did not comport with Pegasus's business plans, it had an explicit procedural avenue to request reassignment since it was afforded 30 days to decline its authorization and to request changes to the Second Round Assignment Order. Failure to seek reassignment is tantamount to accepting the orbit location assignment as conditioned.²⁶

9. We also conclude that Pegasus's alternative request for a waiver of its milestone deadline is without merit. A waiver is appropriate only when granting such relief would not disserve the underlying purpose of the requirement in question and would better serve the public interest than enforcing the requirement.²⁷ The requirement that satellite licensees must enter into a non-contingent contract within one year of receiving their space station licenses prevents warehousing of spectrum by licensees not willing and able to make prompt use of the spectrum reserved for them. It would disserve that purpose to waive the requirement to allow Pegasus to wait for another location to become available.

B. Reassignment

10. In its application, Pegasus seeks to relocate its satellites that are assigned to the 117° W.L. orbital location to the 87° W.L. orbital location and to modify the technical parameters of the satellites. In light of our decision that its license at 117° W.L. is null and void, we find that Pegasus's request for reassignment to the 87° W.L. orbital location is moot.

IV. CONCLUSION AND ORDERING CLAUSES

11. Pegasus's authorization for its satellites at 117° W.L. expressly provides that the license will become null and void in the event Pegasus failed to begin construction by August 2003. It did not do so. We find no good cause to waive or extend the milestone. Based on the foregoing, we conclude that Pegasus's failure to satisfy its milestone renders its authorization null and void. Consequently, its request for reassignment is moot.

²³ American Telephone and Telegraph Co. and Ford Aerospace Satellite Services Corp., *Memorandum Opinion and Order*, 2 FCC Rcd 4431, 4434 (1987); MCI Communications Corp., *Memorandum Opinion and Order*, 2 FCC Rcd 233, 234 (Comm. Car. Bur. 1987).

²⁴ Morning Star Satellite Co., 16 FCC Rcd at 11555.

²⁵ *Id*; see also Tempco Enterprises, Inc. 1 FCC Rcd 20 (1986) (contingencies involving the final configuration of a spacecraft need not prevent the satisfaction of due diligence milestones); GE American Communications, Inc., *Order and Authorization*, 16 FCC Rcd 11038, 11042 (Int'l Bur. 2001) (licensee entered into a non-contingent contract even though its application to modify its authorization to add ISLs was pending).

²⁶ *Pegasus Development Corp. Order*, 16 FCC Rcd at 14388.

²⁷ *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

12. Accordingly, IT IS ORDERED, that the modification application filed by Pegasus Development Corporation, File No. SAT-MOD-20030826-00166 is DENIED.

13. It is FURTHER ORDERED, that Pegasus Development Corporation's request for extension or waiver of its construction commencement milestone for the 117° W.L. orbital location is DENIED.

14. It is FURTHER ORDERED, that the 117° W.L. orbital location assigned to Pegasus Development Corporation in 16 FCC Rcd 14378 (Int'l Bur. 2001) is available for reassignment.

15. This Order is issued under delegated authority, 47 C.F.R. § 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Fern J. Jarmulnek
Deputy Chief
Satellite Division
International Bureau